

or special motor fuel used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for passenger land transportation or school bus operations if section 6427(i) and paragraph (c) of this section did not apply. See section 34(a)(3).

(c) *Allowance of payment.* Payments in respect of diesel or special motor fuel upon which tax was paid under section 4041(a)(1) or section 4041(a)(2) that is used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6427(g)(2) to whom \$1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used in each intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public multiplied by the rate at which tax was imposed on the fuel by section 4041(a)(1) or section 4041(a)(2). See, however, section 6427(b)(2) with respect to the limitation

on the amount of credit for buses other than qualified local buses.

(2) The total number of gallons of fuel purchased and used in each bus while engaged in school bus transportation operations multiplied by the rate at which tax was imposed on the fuel by subsection (a)(1) or (a)(2) of section 4041. See, however, section 6427(b)(2) with respect to the limitation on the amount of credit for buses other than qualified local buses.

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the purchaser last filed an income tax return (if any).

[T.D. 8043, 50 FR 32047, Aug. 8, 1985]

§ 48.6427-3 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6427-1 with respect to fuel used for nontaxable, farming, or other purposes taxable at a lower rate or in § 48.6427-2 with respect to fuel used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall cover only fuel used during the taxable year, or when paragraph (b)(2) of this section applies, used during the calendar quarter. Therefore, fuel on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as fuel in supply tanks or vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this fuel may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter for nontaxable or farming purposes, or in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations. Fuel used during the taxable year or calendar quarter may be covered by the claim for that period although the fuel has not been paid for at the time the claim is filed. The purposes of applying this section, a governmental unit or exempt organization described in § 48.6427-1(c) or § 48.6427-

2(c) is considered to have as its taxable year the calendar year or fiscal year on the basis of which it regularly keeps its books; see § 48.6421-4.

(b) *Time for filing*—(1) *Annual claims.*

(i) A claim under this section for credit or payment with respect to fuel used during a taxable year shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6427-1(c) or unit or exempt organization described in § 48.6427-2(c), must be filed no later than 3 years following the close of its taxable year. See § 48.6421-4.

(2) *Quarterly claims.* A claim for payment of \$1,000 or more in respect to fuel used during any of the first three quarters of the taxable year, filed either under § 48.6427-1(c)(3) in respect of fuel used for nontaxable purposes or for purposes taxable at a lower rate, or under § 48.6427-2(c)(3) in respect of fuel used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502-1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503-1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed

under § 48.6427-1 or § 48.6427-2 by any person with respect to fuel used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136, to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of fuel are allocated to each partner and the use made of the fuel.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 8849 (or on such other form as the Commissioner may designate) in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of fuel used during the short taxable year in the same manner as is provided for fuel used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to \$900 under § 48.6427-1 in respect of fuel used for nontaxable purposes for the calendar quarter ending March 31 and is also entitled to payments of \$1,500 for each of the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the fuel used for nontaxable purposes during the calendar quarters ending June 30, and September 30, 1982, and take a credit of \$900 on its income tax return for the short taxable year in respect of the fuel

used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters testamentary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer).

The claim may cover only fuel in respect of which the decedent would have been entitled to claim payments. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6427-1 of \$1,000 or more applicable to fuel purchased and used for nontaxable purposes during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(3) against the decedent's income tax on the income tax return for the short taxable year in respect of fuel purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of fuel that was sold by the producer or importer in a transaction that was subject to tax under section 4041. For example, a State or local government may not file a claim with respect to any fuel which it purchased tax free from the producer, even though the State or local government used the fuel for the purposes described in paragraph (a) of this section. Similarly, a State or local government may not file a claim with respect to the use of fuel if it is known that another person is entitled to claim a payment, credit, or refund with respect to the same fuel. For example, a State or local government may not file a claim in respect of tax-paid fuel that has been resold by the purchaser to the State or local government.

[T.D. 8043, 50 FR 32048, Aug. 8, 1985, as amended by T.D. 8659, 61 FR 10464, Mar. 14, 1996; T.D. 8748, 63 FR 26, Jan. 2, 1998]

§ 48.6427-4 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4041 shall, to the extent applicable and consistent with section 6427, apply in respect of the payments provided for in section 6427 to the same extent as if these payments constituted refunds of overpayments of the tax imposed on the sale of fuels by section 4041. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6427, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6427, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 34 with respect to amounts payable under section 6427, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6427 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6427 were the person liable for tax.

[T.D. 8043, 50 FR 32049, Aug. 8, 1985]

§ 48.6427-5 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6427 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under such section and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of fuel purchased and the dates of purchase,